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09/997,745	11/29/2001	Sanjiv G. Tewani	DP-306477 7500/124	3702

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EXAMINER

TORRES, MELANIE

ART UNIT

PAPER NUMBER

3683

DATE MAILED: 05/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 8

Application Number: 09/997,745
Filing Date: November 29, 2001
Appellant(s): TEWANI ET AL.

Paul M. Hletko
For Scott A. McBain
For Appellant

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GROUP 3600

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 27, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-14 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

6,056,279

Lee et al.

5-2000

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee et al.

Re claim 1, Lee et al. discloses a mount comprising an orifice plate (23) defining an orifice track (interpreted by the examiner as the orifice through which slug 34 extends) having a first cross-sectional area and a slug (34) slidably disposed in the orifice track, the slug having a bore with a second cross-sectional area less than the first cross sectional area. (Figures 1 and 2)

Re claims 2, 6 and 10, Lee et al. disclose at least one stop (35, 36) disposed in the orifice track.

Re claim 3, 7 and 11, Lee et al. disclose wherein the at least one stop (35, 36) limits travel of the slug in the orifice track.

Re claim 4, 8 and 12, Lee et al. disclose wherein the bore (inner diameter of 34) has a constant cross-sectional area.

Re claims 5 and 9, Lee et al. disclose a mount comprising a base plate (44), a molded member (16) connected to the base plate, an orifice plate (23) connected to one of the base plate or the molded member, the orifice plate defining an orifice track having a first cross-sectional area and a slug (34) slidably disposed in the orifice track, the slug having a bore with a second cross-sectional area less than the first cross sectional area. (Figures 1 and 2)

Re claim 13, Lee et al. disclose wherein the powertrain component is an engine. (Column 1, lines 11-13)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al.

Re claim 14, Lee et al. do not teach wherein the powertrain component is a transmission. The examiner takes official notice that the use of vibration mounts is well

known in vehicle components including transmissions in order to reduce excessive vibrations.

(11) Response to Argument

Applicant's argument as stated in the Appeal Brief is that the opening (36 in Figure 1) of Lee et al. does not accommodate fluid flow and in fact does just the opposite. The Examiner has two different interpretations which are both applicable to the limitation.

First, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., wherein the opening accommodates fluid flow) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant does not have any limitation directed toward fluid flow and therefore the argument is moot.

Second, even if applicant were to include the limitation discussed in the paragraph above in the claims, it is still anticipated by Lee et al. Regarding the opening, the claim states an orifice plate (23) which has an orifice track (36), a slug (34) disposed in the orifice track having a bore (through slug 36) with a second cross sectional area less than the first cross sectional area. Because fluid would flow through the bore within slug 34, it is the examiner's position that it can be interpreted that the orifice track (36) accommodates fluid flow via the bore within slug 36. The fluid flow through the

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slug/orifice track is illustrated by the arrows below as it flows from chamber 31 through the slug/orifice track 36 and to chamber 32 which flow is also reversible through the flow path. Further, the interior of the tube 36 has a smaller cross sectional area than the orifice track 36 as required by the claim. However, again, Applicant's argument that the opening 36 does not accommodate fluid flow is **never claimed**.

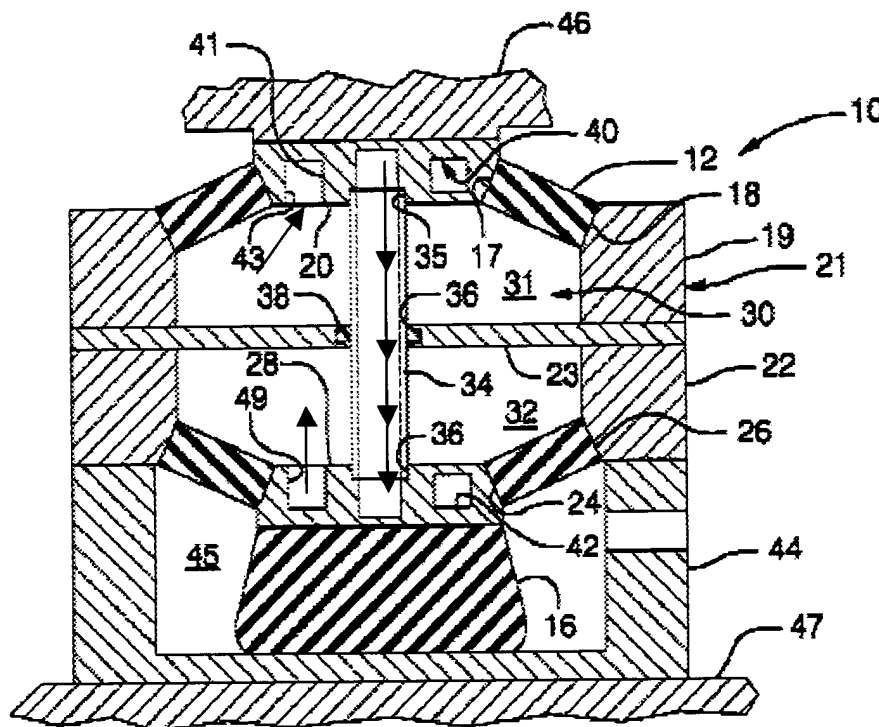


FIG. 1


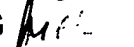
For the above reasons, it is believed that the rejections should be sustained.

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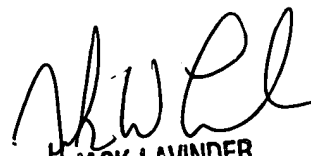
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Respectfully submitted,

MT
May 8, 2003

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5/9/03